DAVIS, AGENT APPOINTED BY THE PRESIDENT UNDER THE TRANSPORTATION ACT OF 1920, *v.* CURRIE.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

No. 60. Argued October 10, 1924.—Decided November 17, 1924.

A writ of certiorari will be dismissed if the case as relied on by the petitioner in argument is not the case as presented in the petition for the writ.

Writ of certiorari dismissed.

CERTIORARI to review a judgment of the Supreme Court of South Carolina which sustained a judgment against the Director General of Railroads for damages alleged to have resulted to the plaintiff from the refusal of a railway gateman to allow him access to a train, accompanied by abusive language, etc.

Mr. Douglas McKay, with whom *Mr. Thos. W. Davis* was on the brief, for petitioner.

Mr. L. D. Jennings, with whom *Mr. A. S. Harby* was on the brief, for respondent.

MR. JUSTICE MCREYNOLDS delivered the opinion of the Court.

This writ must be dismissed. The petition therefor declared—The sole question presented is, "Can damages for humiliation and wounded feelings be awarded the respondent against the petitioner, the United States Railroad Administration, under the provisions of the Federal Control Act, the proclamations of the President and the general orders of the Director General pursuant thereto?"

At the hearing counsel relied on the following: "The judgment against the Director General of Railroads for wounded feelings and humiliation arising out of a wanton, willful and malicious act of his servant is unauthorized, involving, essentially, the infliction of a penalty upon the Government." The argument was that although the trial court distinctly limited the jury to actual damages, nevertheless, it necessarily follows from the size of the verdict that punitive damages were assessed against and a penalty was imposed upon the United States.

The petition did not state the case presented at the bar.

Dismissed.